IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1756 of 1987
With
CIVIL APPLICATION NO.1257 OF 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMAD USUFJI
Versus
LATE KHAN BAHADUR YASINMIYA AMIRMIYA FARUKI

A.N.GULIWALA
Versus
AHMED USUFJI

Appearance:
1. First Appeal No. 1756 of 1987
Mr.S.N.Shelat,learned Senior Advocate, for
MR MB FAROOQUI for appellant No. 1-2
..... for Respondent No. 1-5,7-11
MR SK BUKHARI for Respondent No. 6
Mr.L.R.Poojari, learned AGP for Charity Commissioner.

1. Civil Application No. 1257 of 2003

PARTY-IN-PERSON for Petitioner No. 1
MR SN SHELAT for Respondent No. 1
MR SS BELSARE for Respondent No. 1
MR SURESH M SHAH for Respondent No. 1
..... for Respondent No. 2-8,10-12
Mr.L.R.Poojari, learned AGP for Respondent No. 9

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 21/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

1. Applicant in person Shri A.N. Guliwala had moved this court by way of filing Civil Application No.1257 of 2003 in the main First Appeal being First Appeal No.1756 of 1987, praying that the applicant be joined in the proceedings as a third party and further prayed that necessary direction be given to the office for re-construction of Civil Application No.2419 of 1987 with the order passed thereon. The Application is supported with an affidavit of applicant Shri A.N. Guliwala dated 30.1.2003. When the said Application was placed before us and after considering the submission made before us, it was brought to our notice by the learned senior advocate Shri S.N.Shelat, who appeared for the appellants in the aforesaid First Appeal being First Appeal No.1756/87, that both the appellants had expired during the pendency of the Appeal and no steps were taken for bringing new Trustees or the Members of the Committee on record to prosecute the present Appeal on behalf of appellants and accordingly Appeal had abated. The challenge in the main First Appeal by the deceased appellants was in respect of the judgment and decree passed by the City Civil Court in Civil Suit No.590/79 dated 23.7.87, wherein the learned trial Judge has amended the Scheme and declared that the Scheme be substituted in place of the earlier in operation with effect from the date of the decree and the plaintiffs and defendant No.5 each shall get Rs.1000/-- of costs of the final decree from the Wakf properties with certain directions. Mr. Shelat has also brought to our notice by producing the copy of the order passed in Civil Application No.1694 of 1988 dated 8.2.89 wherein the applicants in the application are permitted to continue by observing that it will be open to the City Civil Court to proceed with CMA No.287/87 and to that extent stay

granted earlier was relaxed. We have also perused the submission and the explanation rendered by the office about missing Application being Civil Application No.2419/87 with the order and we further directed the office to make all efforts to find out those papers and place the same before the court. As further found from the office submission that the said Application was placed before the court on 2.4.1991 with Civil Application No.1096/91 with main matter and Civil Application No.1096/91 was filed by those applicants praying for vacating stay, which was granted earlier and the said Application for vacating stay was dismissed for default on 2.4.91. The explanation further shows that there is no clue to trace out the missing papers.

2. In light of such situation and as per the statement made by Mr.S.N.Shelat, learned senior advocate at the Bar on behalf of the appellants that both the appellants, namely, Ahmad Usufji of Ahmedabad and Mohamad Kasam Valliulla had expired and no steps were taken to prosecute the Appeal further by filing Application for bringing any Trustee/member in place of the appellants, the Appeal itself has abated. Considering this situation and as the Appeal is abated, we are not examining the contentions raised in the Appeal in respect of the merits of the Appeal and in view of the fact that the Appeal is disposed of as abated, whatever relief granted earlier during the pendency of the Appeal, shall stand vacated.

3. As we have disposed of main Appeal by holding that the Appeal itself has abated, we are not examining the contentions raised in the Application being Civil Application No.1257 of 2003 and accordingly the said Civil Application is also disposed of. It will be open for the applicant in the said Application to take appropriate steps for his grievance before the concerned authority/court. Civil Application No.1257 of 2003 is accordingly disposed of with no order as to costs.

(D.K.Trivedi,J)

(K.M.Mehta,J)

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